

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THURSDAY, THE SIXTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE

AND

THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT APPEAL Nos.1341 and 1432 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 17-08-2004 in W.P.No.6652 of 2004 on the file of the High Court.)

Between:

1 Vanama Sitarama Nageswara Rao, s/o Venkataratnam,
R/o.23-7-8, R-Agraharam, Guntur.

2 Tadikonda Srinivasa Rao, S/o. T.Rajaroo,
M/s.Vanama Appanna & Sons, Iron Merchants, Patnam Bazar,

Guntur.

3 Tadikonda Subramanya Panakala Rao, S/o. T.Rajaroo, M/s.Vanama

Appanna & Sons, Iron Merchants, Patnam Bazar, Guntur.

..... APPELLANTS

AND

1 Posani Radhakrishnamurthy, S/o. late P.Sambasivarao,
R/o. 4-4-104, 3rd Lane, Chandramouli Nagar, Guntur,

Prop.Pioneer Fertilizers Company,
Patnam Bazar, Guntur.

2 Superintendent of Police, Guntur.

3 Station House Officer, L & O, Lalapet Police Station, Guntur.

.....RESPONDENTS.

Counsel for the Appellants : Mr.P.R.PRASAD

Counsel for Respondent No.1 : Mr. O.KAILASHNATH REDDY

Counsel for Respondent Nos.2 & 3: G.P. FOR HOME

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WRIT APPEAL No.1432 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 17-08-2004 in W.P.No. 6652 of 2004 on the file of the High Court.)

Between:

Posani Radhkrishnamurthy, S/o.late P. Sambasiva Rao,
R/o. 4-4-104, 3rd Lane, Chandramouli Nagar, Guntur,

Proprietor: Pioneer Fertilizers Company, 23-6-3,
Shivaji Building, Patnam Bazar, Guntur.

..... APPELLANT

AND

- 1 Superintendent of Police, Guntur.
- 2 Station House Officer, L & O, Lalapet Police Station, Guntur.
- 3 Vanama Sitarama Nageswara Rao, S/o. Venkataratnam,
R/o. 23-7-8, R-Agraharam, Guntur.
- 4 Tadikonda Srinivasa Rao, S/o. T. Rajarao,
M/s. Vanama Appanna & Sons, Iron Merchants, Patnam Bazar,

Guntur.

- 5 Tadikonda Subramanya Panakala Rao, S/o. T. Rajarao,
M/s. Vanama Appanna & Sons, Iron Merchants, Patnam Bazar,

Guntur.

.....RESPONDENTS.

Counsel for the Appellant: Mr.O.KAILASHNATH REDDY

Counsel for Respondent Nos.1 & 2: G.P. FOR HOME

Counsel for Respondent Nos.3 to 5: Mr.P.R.PRASAD.

The Court made the following :

COMMON JUDGMENT: (per the Hon'ble the Chief Justice)

These two appeals arise out of the same order passed by learned single Judge in W.P.No.6652 of 2004. Writ Appeal No.1432 of 2004 is filed by the writ petitioner,

whereas Writ Appeal No.1341 of 2004 is filed by respondents 3 to 5 in the writ petition. For clarity, parties are hereinafter referred to as they are arrayed in the writ petition.

Writ petition was filed on 6-4-2004 alleging unlawful dispossession from the property in question by respondents 3 to 5 with the help of police.

The petitioner claims to be a tenant and alleges that he had been in occupation of the premises bearing No.23-6-3, Shivaji Building, Patnam Bazar, Guntur on perpetual lease given to his father by the father of Maddi Rana Pratap. After the demise of the father of the petitioner and the father of Maddi Rana Pratap, both of them stepped into their shoes and were continuing as tenant and landlord. Some offer was made to purchase the property by the petitioner and other tenants of the property and advance was also paid. But Rana Pratap had been trying to dispossess the petitioner unlawfully. The petitioner filed a suit in O.S.No.1756 of 2002 in the Court of the I Additional Junior Civil Judge, Guntur, in which there was interim injunction not to interfere with the possession of the petitioner. This order was modified by the order of *status quo*. Suit had been pending and even in that suit an order was passed on 18-3-2004 to deposit the rent as well.

The petitioner further alleges that he was given to understand that respondents 3 to 5 approached Rana Pratap to purchase the property and got sale deeds executed in their favour. Thereafter, on 26-2-2003, respondents 3 to 5 filed a suit in O.S.No.395 of 2003 before the Principal Junior Civil Judge for delivery of possession by evicting the petitioner. When the suit was pending, the petitioner alleged that on 2-4-2004, respondents 3 to 5 came to the shop, trespassed into the shop, physically pushed the petitioner's clerk, pulled down the shutters and locked down and took away the keys, and thus he was illegally dispossessed.

Affidavit in reply of respondents 3 to 5 is to the effect that they lawfully purchased the property on the basis of sale deeds dated 11-12-2002 and 21-12-2002, and thereafter filed the suit against the petitioner for eviction. They alleged that the petitioner's licence to continue in the business has lapsed in December 2003. When he sold away stocks of seeds and fertilizers and voluntarily vacated the suit premises on 22-3-2004, possession of the shop was taken by them and they kept their own articles. As an after-thought, the petitioner came along with twenty antisocial elements and tried to occupy the shop on 4-4-2004. Respondents 3 to 5

have lodged a complaint with the police and ultimately filed the suit against the petitioner. It is stated that since the petitioner vacated the shop on 22-3-2004, an application was filed by them in O.S.No.395 of 2003 on 23-3-2004 for withdrawal of the same. Application is still pending. In the suit in O.S.No.1756 of 2003, Advocate-Commissioner was appointed. The other allegations made by the petitioner were denied.

Respondents 1 and 2 also filed their version on record denying that they have any role to play except registration of Crime No.1777 of 2002 against the petitioner for the offences under Sections 447, 427 and 506 IPC on the complaint filed by respondent No.3 under Section 156(3) Cr.P.C.

Learned single Judge, by the impugned order, directed clubbing of O.S.No.1756 of 2002 on the file of Additional Junior Civil Judge, Guntur and O.S.No.395 of 2003 pending on the file of Principal Junior Civil Judge, Guntur and also directed that having regard to the allegations made by the petitioner, it is desirable that Superintendent of Police and Station House Officer are added as parties to the suit. Writ petition was disposed of with a direction that in the event it is found that respondents had illegally dispossessed the petitioner, he shall be entitled to restoration of possession, and till then possession of the premises shall remain with the police.

The writ petitioner as well as respondents 2 to 5 have filed separate appeals questioning the legality of the said order.

Heard both sides.

There is no manner of doubt that suit filed by the petitioner is only against the real owner. In the said suit, the petitioner had not made respondents 3 to 5 as parties. Even according to the petitioner, he has not purchased the property. There is admittedly a dispute as regards the fact that whether the petitioner voluntarily delivered possession to respondents 3 to 5 on 22-3-2004 or that the petitioner was unlawfully dispossessed from the property on 2-4-2004. In view of the allegations made in the writ petition, extraordinary jurisdiction of this Court ought not to have been invoked under Article 226 of the Constitution of India by the petitioner. Even the learned single Judge has not ventured to decide the dispute between the parties. However, respondents 3 to 5 are aggrieved by the direction issued by the learned single Judge while disposing of the writ petition. While disposing of the writ petition,

the only course ought to have been adopted would have been to relegate the petitioner to avail the remedy of approaching the civil Court for redressal of his grievance, since admittedly there is a dispute as to whether on 22-3-2004 the petitioner voluntarily vacated the shop or on 2-4-2004, he was dispossessed from the property. If the petitioner has been dispossessed from the property unlawfully, there is no manner of doubt that he will be entitled to the relief, provided he would establish his right in the suit. Therefore, insofar as the direction given by the learned single Judge of clubbing two suits is concerned, the same cannot be faulted with, but rest of the direction is beyond the scope of the writ petition and prayer made by the writ petitioner. Respondents 1 and 2 are not necessary parties to the suit and cannot be added as parties. The possession of the shop shall remain with respondents 3 to 5 subject to the result of the suit already pending, or to be filed by the petitioner against respondents 3 to 5 in the civil Court.

Accordingly, Writ Appeal No.1341 of 2004 filed by respondents 3 to 5 is allowed, and Writ Appeal No.1432 of 2004 filed by the writ petitioner is dismissed. The impugned order of the learned single Judge is set aside. The writ petition is dismissed, but we would confirm the direction which has been issued by the learned single Judge namely, directing withdrawal of suit in O.S.No.1756 of 2002 on the file of I Additional Junior Civil Judge, Guntur to be transferred to the Court of Principal Junior Civil Judge, Guntur, to be tried along with O.S.No.395 of 2003. The appellants in Writ Appeal No.1341 of 2004 shall be put in possession of the shop by the respondents. No costs.

(DEVINDER GUPTA, C.J.)

16th September 2004.

(C.V.RAMULU, J.)

To

- 1.The Principal Junior Civil Judge, Guntur.
- 2.The I Additional Junior Civil Judge, Guntur.
- 3.The Superintendent of Police, Guntur.
- 4.The Station House Officer, L & O, Lalapet Police Station, Guntur.
5. Posani Radhakrishnamurthy, S/o. late P.Sambasivarao,
R/o. 4-4-104, 3rd Lane, Chandramouli Nagar, Guntur,

Prop.Pioneer Fertilizers Company, Patnam Bazar, Guntur.
- 6.Vanama Sitarama Nageswara Rao, S/o. Venkataratnam,
R/o. 23-7-8, R-Agraharam, Guntur.
- 7.Tadikonda Srinivasa Rao, S/o. T. Rajarao,
M/s. Vanama Appanna & Sons, Iron Merchants, Patnam Bazar,

Guntur.
- 8.Tadikonda Subramanya Panakala Rao, S/o. T. Rajarao,
M/s. Vanama Appanna & Sons, Iron Merchants, Patnam Bazar,

Guntur.
- 9.Two C.Cs. to Govt. Pleader for Home, High Court Bldgs., Hyderabad (OUT).
- 10.Two C.D. copies.